IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO NO. 326/2002.

Judgment delivered on: September 19, 2007

Smt. Sushila Dabas
W/o Late Sh. Raj Singh Dabas
R/o B-86, Pushpanjali Enclave,
Pitampura, Delhi & Ors. ..... Appellants

Through: Mr. Jai Raj Mudgal, Advocate

versus

M/s The New India Assurance Co. Ltd., & Ors. ..... Respondent
Through: Mr. D.K.Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

CM. No. 685/2002

Counsel for the appellant contends that a meager amount of compensation has been awarded in favour of the appellants, only on account of the fact that certain important documents concerning the status of the deceased as well as proof of his age etc., were not placed by the appellants/claimants before the Tribunal.

By way of the present appeal, the appellants have claimed enhancement of compensation from Rs.1,98,000/- to Rs. 6,50,000/-. It is an admitted position that the awarded compensation can be enhanced only if this Court allow the application moved by the appellant under Order 41 Rule 27, otherwise no grievance can be raised against the impugned award dated 25.8.2001. Under these circumstances the application filed by the appellants under Order 41 Rule 27 is taken up to see whether any case is made out for allowing the said application.

In this application the appellants have stated that accident had occurred in the year 1994, when the deceased Dr. Raj

Singh Dabas was about 45 years of age and he was highly educated, having Ph.D in Zoology Science as well as other professional degrees in Library Science like B.Lib. and M.Lib. The deceased husband of the appellant no.1 had worked as a Librarian in Aurobindo College, University of Delhi and thereafter he went to Libya to join as Chief Librarian in the Library of Central Hospital, Szuara, Municipality of EL-Nekat-EL-Khamse between the period 1980 to 1986. In the year 1986 the deceased Dr. Raj Singh Dabas returned to India from Libya and started his personal business as a Builder and in the said business he was fully successful and was earning handsome income for the family. All the documents pertaining to the age proof, educational qualification, work experience as Librarian and also Chief Librarian and financial status of the deceased were handed over by the appellants to their counsel at the time of filing of the claim petition and they were informed by their counsel that all the documents have been submitted on record before the learned Tribunal. Till the time decision of the case by the Tribunal, the appellants remained under

bona fide impression that the counsel must have filed the said documents. The appellants have stated that the claim petition was decided by the learned Tribunal on 25.8.2001 and, thereafter, the certified copy of the impugned order was obtained and it was only, thereafter, it came to their notice that the said documents were not placed on record by the counsel and due to non production of the said documents the learned trial court wrongly observed that the deceased, Dr. Raj Singh Dabas, was not a skilled person and he was not having any Doctorate Degree and he never worked as a Librarian in Aurobindo College, University of Delhi and also never went to Libya and also did not work as Chief Librarian in Libya.

I have heard the arguments advanced by the counsel for the appellants at considerable length.

The explanation for not filing the said documents has been given by the appellants in para 4 of the application. The same is reproduced as under:

"That the appellants/applicants handed

> over all the documents referred above to their counsel at the time of filing of the claim petition before the Ld. Tribunal and they were told by their counsel even during the pendency of claim petition that all the documents have been submitted on record before the Ld. Tribunal and as such the appellants/applicants remained in bona fide belief that all the above referred documents are available on record of Ld. Tribunal and the decision will be given after considering and appreciation of the documentary evidence as well as oral evidence, and moreover, the present appellants/applicants despite their best efforts and due diligence could not come to know about hte fact that the above referred documents, have not been submitted on record by their Ld. counsel as they never suspected over the statement of their Ld. Counsel about the submissions of documents and as such till the decision of the case by the Ld. Tribunal the appellants/applicants remained under the bona fide belief that all above referred documents are available on record."

The contention of the counsel for the petitioner is that authenticity of the said documents cannot be doubted as various certificates and degrees were awarded to the deceased during his life time.

Counsel for the appellant has also drawn my attention to the reference made to the deposition made by PW1 in the impugned order where, PW1 who is widow of the deceased has

stated that the deceased has worked as Librarian in Aurbindo College, New Delhi up to 1980. The witness had also stated that her husband went to Libya in the year 1980 and thereafter returned back to India in the year 1986. The said witness also deposed that the deceased started his own business as a builder after his return to India.

The contention of the counsel for the appellants is that the appellant no.1 has made reference to the education of the deceased as well as to his business but since the documents were not on record, therefore, the witness was not in a position to prove the same.

Mr. D.K. Sharma counsel appearing for the respondent on the other hand contends that this is not the stage to allow the appellants to place on record such vital documents which were in possession of the appellants. Counsel for the respondent further contends that no reasonable explanation has been given by the appellants in the application for not placing the said documents for such a long period. Mr. Sharma states that in a routine manner

the blame has been put on the counsel, for not filing the documents.

I find force in the arguments advanced by the counsel for the respondent. The appellants have filed the claim petition in the year 1995 and the award in this case was passed on 25.8.2001. The Tribunal has made categorical observation in the impugned order by stating that the petitioner has not adduced any evidence to show that the deceased had been awarded the Doctorate Degree or he had worked as a Librarian in Aurbindo College, University of Delhi or had gone to Libya and then returned back to India in 1986. No documentary evidence was adduced by the appellants that the deceased had started working as a builder after his return from Libya to India in the year 1986. Even the witness could not divulge as to what was the income of her deceased husband from the building work. The income proof, age certificate and the proof of educational qualifications as well as service etc., are very vital documents as far as compensation case is concerned. These documents are required to be filed right at the very inception of the

filing of the claim or at least prior to the beginning of the trial in the case. In the application in a ritualistic manner, blame has been put on the counsel by vaguely stating that the documents referred were handed over to the counsel. Not only the non placement of the documents by the appellants, even the wife of the deceased who entered the witness box could not disclose the income of the deceased from his alleged business as a builder.

It is thus apparent that the appellants are trying to fill up the lacuna which had crept during the trial of the case in the absence of documentary evidence, by moving the present application under Order 41 Rule 27.

Order 41 Rule 27 is an exception to the general rule.

The application for production of additional evidence cannot be allowed at the appellate stage if the appellants failed to advance any justifiable reason for not placing the additional evidence before the Lower Court at the appropriate stage. The provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and fill up the

omissions in the Court of appeal. The parties seeking to produce additional evidence has to satisfy the the Court that notwithstanding exercise of due diligence such evidence was not within his knowledge or could not, after the exercise of due deligence, be produced by him at the time when the decree was passed. The only ground taken by the appellants in the application moved under Order 41 Rule 27 is that they had handed over the documents to their counsel at the time of filing the claim petition and the same were not filed by the counsel and this fact of non-filing of the documents came to the knowledge of the applicants only after the decision of the case. I do not find this to be a plausible reason or show any kind of excuse of due diligence on the part of the appellant in prosecuting the claim petition. It is generally found that the Advocates are made easy scape goats for all such maladies. Although it cannot be ruled out that there can be a negligence on the part of an Advocate in not effectively protecting the interest of his clients by not placing on record the essential documents or by not taking other effective steps in proper

prosecuting a particular case, but at the same time one has to be totally cautioned as if the plea of non-filing of the documents in the manner as has been taken by the appellant is accepted, then in every such like case the parties would shift the blame on their counsels to claim such kind of reliefs. This cannot be permitted to happen and unless there are specific allegations against a particular Advocate it cannot be accepted that the concerned Advocate represented the applicants would not have placed the said additional evidence on record, had the same been handed over by the appellant during the course of the trial. I, therefore, do not feel satisfied with the kind of explanation given in the application under Order 41 Rule 27 and find the application totally devoid of any merit. The same is, accordingly, dismissed.

FAO No. 326/2001

In view of the order passed in C.M. 685/2002 , the appeal stands dismissed.

September 19, 2007 **KAILASH GAMBHIR J.**
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